numbers based on their speed.[458] The Commission also sought comment on how to treat multi-line switched business services, such as Centrex and private branch exchange, and other types of services, such as electronic fax services under a telephone-number based approach.[459] Thereafter, in the *2008 Comprehensive Reform FNPRM*, the Commission sought comment on a series of proposals to adopt a new contribution methodology based on assessing telephone numbers.[460] The FNPRM contained three proposals, each with a numbers-based assessment component. Two of the proposals (2008 Appendix A Proposal and 2008 Appendix C Proposal) would have assessed USF contributions based on telephone numbers used for residential services, at a flat $1.00 per month charge for each number, and would have assessed business services based on connections.[461] The third proposal (2008 Appendix B Proposal) would have assessed USF contributions based on telephone numbers used for consumer and business services, at a flat $.85 per month charge for each number.[462]

287. Proponents of numbers-based methodologies have historically argued that such a system would enhance the specificity and predictability of the carriers' contributions by eliminating the need to distinguish between information and telecommunications revenues, or interstate and intrastate revenues.[463] Proponents have argued that a numbers-based system would benefit end users because it is technologically and competitively neutral—consumers would pay the same pass-through charge regardless of the type of services they choose— and such pass-through charges would be more stable.[464] Parties have also asserted that assessing universal service contributions based on telephone numbers would promote number conservation.[465] Others, however, have raised concerns that a numbers-based methodology would not satisfy the Act's statutory requirements that telecommunications service providers contribute to universal service on an "equitable and nondiscriminatory basis" because it could reduce contributions from certain industry segments and increase them for others.[466] Some assert that assessing a flat universal service charge (such as a telephone-number based charge) is inherently unfair because it does not take into account the fact that some people make many interstate and international

[458] *See 2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24995, para. 96.

[459] *Id.* at 24995-96, para. 97.

[460] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 1639, para. 40.

[461] *Id.* at 6536, App. A, para. 92 & at 6735, App. C, para. 88.

[462] *Id.* at 6669, App. B, para. 39.

[463] Letter from Mary L. Henze, AT&T Services, Inc., and Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, Attach. 2 at 1 (filed Sept. 11, 2008) (AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter).

[464] *See, e.g.*, Comments of National Cable and Telecommunications Association, WC Docket No. 06-122, at 5 (filed Aug. 9, 2006); Comments of Vonage America, Inc., WC Docket No. 06-122, at 6 (filed Aug. 9, 2006) (Vonage Aug. 9 2006 Comments); AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 1.

[465] *See, e.g.*, Comments of the Information Technology Industry Council, WC Docket No. 06-122, at 6 (filed Aug. 9, 2006) (IT Aug. 9 2006 Comments); Vonage Aug. 9 2006 Comments at 7.

[466] *See, e.g.*, Comments of Fred Williamson & Associates, Inc., CC Docket No. 96-45 *et al.*, at 13-15 (filed Apr. 12, 2002); Comments of NRTA and OPASTCO, CC Docket No. 96-45 *et al.*, at 7-11 (filed Apr. 22, 2002); Comments of SBC Communications, Inc., C Docket No. 96-45 *et al.*, at 18 (filed Apr. 22, 2002); Reply Comments of Verizon Wireless, CC Docket No. 96-45 *et al.*, at 6 (filed May 13, 2002); Comments of Verizon Wireless, CC Docket No. 96-45, at 5–6 (filed Apr. 22, 2002); *see also* State Members of Joint Board CAF Comments at 121-23; Letter from Michael R. Romano, Senior Vice President-Policy, National Telecommunications Cooperative Association, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 at 2 (filed Feb. 3, 2012).

calls, while others make few calls in a given month, yet all users (heavy users or light users) would be subject to the same flat monthly assessment amount.[467]

288. In light of the varied numbers-based proposals in the record, the evolution of the communications ecosystem, and the comments received over the past decade, we now seek to refresh the record on a numbers-based assessment methodology, as discussed below. We seek comment on whether a numbers-based methodology would further our proposed reform goals of greater administrative efficiency, fairness, and sustainability of the Fund. We also seek comment on the costs and benefits of a numbers-based contribution methodology. We ask parties claiming significant costs or benefits of a numbers-based system to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

289. As with connections, questions related to the design of a numbers-based assessment system are distinct from, although complementary to, questions raised in Section IV of this Notice regarding which providers and services should contribute to universal service.[468] While it is true that in an exclusively numbers-based system, services that do not rely on numbers would not be assessed, even within such an approach, we might choose to include or exclude from assessment particular number-reliant services. We therefore encourage commenters who advocate a numbers-based methodology to address the questions raised in Section IV of this Notice in addition to specific definitional questions in this section, such as which numbers should be assessable.

1. Legal Authority

290. In this section, we seek comment on our legal authority to adopt a numbers-based contributions methodology. As noted above, section 254(d) of the Act requires that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute on an equitable and nondiscriminatory basis, to the specific, predictable, and sufficient mechanisms established by the Commission to preserve and advance universal service."[469] Section 254(d) also provides the Commission with permissive authority to require "providers of interstate telecommunications" to contribute to the Fund.[470] Title I of the Act gives the Commission ancillary jurisdiction over matters reasonably related to "the effective performance of [its] various responsibilities" where the Commission has subject matter jurisdiction over the service.[471]

291. The Commission previously has sought comment on whether the Commission's "plenary authority" over numbering in section 251(e) provides additional authority to adopt a numbers-based methodology.[472] The Commission has "exclusive jurisdiction over those portions of the NANP that pertain to the United States."[473] In the *VoIP 911 Order*, the Commission relied on its section 251(e)

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[467] *See, e.g.*, Letter from Maureen A. Thompson, Executive Director, Keep USF Fair Coalition, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 5–7 (filed Mar. 27, 2006); *see also* Letter from David C. Bergmann, NASUCA, to Kevin Martin, Chairman, FCC *et al.*, WC Docket No. 08-152 *et al.*, at 9 (filed Sept. 30, 2008).

[468] *See supra* Section IV.

[469] 47 U.S.C. § 254(d). *See supra* Section IV.A.

[470] 47 U.S.C. § 254(d).

[471] *See FCC v. Midwest Video Corp.*, 440 U.S. 689, 700 (1979); *United States v. Midwest Video Corp.*, 406 U.S. 649, 667-68 (1972);*United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-178 (1968); *see also American Library Ass'n v. FCC*, 406 F.3d 689 (D.C. Cir. 2005).

[472] *See 2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6539, para. 98.

[473] 47 U.S.C. § 251(e)(1).

authority to require interconnected VoIP providers to provide E911 services.[474] In so doing, the Commission noted that it exercised its authority under section 251(e) because, among other reasons, "interconnected VoIP providers use NANP numbers to provide their services."[475]

292. We seek to refresh the record on the Commission's authority pursuant to sections 254(d), 251(e), and Title I of the Act to establish a numbers-based contributions methodology. Under a numbers-based approach, some providers could be required to contribute directly to the Fund that historically may have contributed indirectly or not at all. For example, under a numbers-based approach based on "assessable numbers," any provider who provides a service or device with an assessable number to an end user could be required to contribute, irrespective of whether the provider is a "telecommunications carrier" subject to the mandatory contribution obligation of section 254.[476] We seek comment on whether the public interest would be served if the Commission were to exercise its permissive authority to require these providers to contribute to the Fund. What is the extent of the Commission's ancillary authority under Title I of the Act? Does the provision of a service that relies on the assignment of an assessable number to an end user bring such a service offering under the Commission's broad subject matter jurisdiction because it involves, in some manner, "interstate…communication by wire or radio?"[477] Does the Commission's plenary authority over numbering under section 251 of the Act support use of a numbers-based contribution methodology?

293. In responding to the questions below, we invite commenters to address how a numbers-based system should be structured to fulfill the statutory requirement that telecommunications service providers contribute on an equitable and nondiscriminatory basis. If we were to adopt a numbers-based contribution methodology, should we also explicitly exercise our permissive authority over providers of telecommunications or specified services to make clear that providers of those services would be assessed? How would we ensure that all entities that contribute under a numbers-based system are providers of interstate telecommunications?

2. Defining Assessable Numbers for Contribution Purposes

294. Below, we seek comment on *which* numbers should be assessed under a numbers-based contribution methodology. We also seek comment on whether defining assessable numbers or alternatives that commenters may suggest would best further our proposed goals for contribution reform. We specifically ask commenters to estimate the per-number assessment under their preferred definition of assessable numbers and the scope of any exemptions that they propose. We also ask parties to address the impact of differing definitions of assessable numbers on who would contribute in the future, compared to today.

295. *Definition of Assessable Numbers.* We seek comment on how the Commission should define an "assessable" number for purposes of a numbers-based contributions methodology. In other contexts, the Commission has defined "numbers" for purposes of Commission reporting requirements. For example, the Commission requires that each telecommunications carrier that receives numbering resources from the North American Numbering Plan Administrator (NANPA), the Pooling Administrator, or another telecommunications carrier, report its numbering resources in each of six defined categories of numbers set forth in section 52.15(f) of our rules.[478] In the regulatory fee context, the Commission has

[474] *See VoIP 911 Order*, 20 FCC Rcd at 10265, para. 33.

[475] *Id.*

[476] A proposed definition of "assessable number" is discussed below. *See infra* Section V.B.2.

[477] 47 U.S.C. § 152(a); *see also VoIP 911 Order*, 20 FCC Rcd at 10261-62, para. 28 (providing detailed explanation of why interconnected VoIP falls within the Commission's subject matter jurisdiction).

[478] These six categories of numbers are defined in 47 C.F.R. §52.15(f) as follows:

(continued…)

adopted the category of "assigned numbers" as the starting point for determining how to assess fees on certain providers, but found it necessary to modify that definition to account for different regulatory contexts.[479] Specifically, in assessing regulatory fees for commercial mobile radio service (CMRS) providers that report number utilization to NANPA based on the reported assigned number count in their Numbering Resource Utilization and Forecast (NRUF) data, the Commission requires these providers to adjust their assigned number count to account for number porting. The Commission found that adjusting the NRUF data to account for porting was necessary for the data to be sufficiently accurate and reliable for purposes of regulatory fee assessment.[480] We seek comment on whether we should adopt any of these definitions of numbers for purposes of defining an "assessable number" for USF contributions.

296. Specifically, we seek comment on the following definition of assessable numbers:[481]

> *An "Assessable Number" is a NANP telephone number that is in use by an end user and that enables the end user to receive communications from or terminate communications to (1) an interstate public telecommunications network or (2) a network that traverses (in any manner) an interstate public telecommunications network in the United States and its Territories and possessions. Assessable Numbers include geographic as well as non-geographic telephone numbers (such as toll-free numbers and 500-NXX numbers) as long as they meet the other criteria described in this part for Assessable Numbers.*

297. We seek comment on whether the above definition furthers our overall proposed goals of reform. Is the above definition sufficiently broad to capture all types of numbers, including those

(Continued from previous page)

(i) Administrative numbers are numbers used by telecommunications carriers to perform internal administrative or operational functions necessary to maintain reasonable quality of service standards.

(ii) Aging numbers are disconnected numbers that are not available for assignment to another end user or customer for a specified period of time. Numbers previously assigned to residential customers may be aged for no more than 90 days. Numbers previously assigned to business customers may be aged for no more than 365 days.

(iii) Assigned numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assigned numbers.

(iv) Available numbers are numbers that are available for assignment to subscriber access lines, or their equivalents, within a switching entity or point of interconnection and are not classified as assigned, intermediate, administrative, aging, or reserved.

(v) Intermediate numbers are numbers that are made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer. Numbers ported for the purpose of transferring an established customer's service to another service provider shall not be classified as intermediate numbers.

(vi) Reserved numbers are numbers that are held by service providers at the request of specific end users or customers for their future use. Numbers held for specific end users or customers for more than 180 days shall not be classified as reserved numbers.

[479] 47 C.F.R. § 52.15(f)(iii).

[480] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2005; Assessment and Collection of Regulatory Fees for Fiscal Year 2004*, MD Dockets Nos. 05-59, 04-73, Report and Order and Order on Reconsideration, 20 FCC Rcd 12259, 12271, paras. 39–40 (2005).

[481] *See 2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6547-6548, App. A, para. 116, at 6680, App. B, para. 63, & at 6746, App. C, para. 112.

associated with services aimed primarily at international calls that either commence or end in the United States and its Territories? Should we include in the above definition of numbers toll-free numbers that are also part of the North American Numbering Plan, but are governed by sections 52.101 through 52.111?[482]

298. We also seek comment on alternatives. For instance, should we define assessable numbers consistent with the definition of "Assigned numbers" in Part 52: "Assessable numbers are numbers working in the Public Switched Telephone Network under an agreement such as a contract or tariff at the request of specific end users or customers for their use, or numbers not yet working but having a customer service order pending. Numbers that are not yet working and have a service order pending for more than five days shall not be classified as assessable numbers."[483] Would such a definition include NANP numbers assigned to mobile broadband-only devices, such as 3G tablets or laptop cards? If not, should we modify this definition, or would it be appropriate to exclude numbers associated with such devices and services associated with them? Commenters proposing alternative definitions of "assessable numbers" should explain how their proposal satisfies our proposed goals for contributions reform.

299. We note that any definition of assessable numbers may exclude special access services and possibly other services that are clearly assessed today, but that do not include a telephone number. In addition, such a definition may exclude some of the services mentioned in Section IV.B of this Notice.[484] We seek comment on how such services should be treated under a pure numbers-based approach.

300. *Cyclical Numbers.* We seek comment below on whether contributors should report numbers on a monthly basis.[485] If we were to adopt such a rule, should numbers used for intermittent or cyclical purposes (and that may not be fully in use at the time of a monthly reporting obligation) be excluded or included from the definition of Assessable Numbers?

301. For purposes of this discussion, we define numbers used for cyclical purposes as numbers designated for use that are typically "working" or in use by the end user for regular intervals of time. These numbers include, for example, an end-user's summer home telephone number that is in service for six months out of the year.[486] In the *NRO III Order*, the Commission clarified that these types of numbers should generally be categorized as "assigned" numbers if they meet certain thresholds and that, if they do not meet these thresholds, they "must be made available for use by other customers" (*i.e.*, they are "available" numbers).[487] Is there a bright-line way for providers to determine, and for the Commission or

[482] *See* 47 C.F.R. § 52.101 – 52.111.

[483] *See* 47 C.F.R. § 52.15(f)(iii).

[484] *See supra* Section IV.B.

[485] *See infra* Section V.C.7.

[486] *See Numbering Resource Optimization et al.*, CC Docket No. 99-200 *et al.*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, 17 FCC Rcd 252, 303, para. 119 (2001) (*NRO III Order*).

[487] *NRO III Order*, 17 FCC Rcd at 304, para. 122 ("With this requirement, we seek to limit the amount of numbers that are set aside for use by a particular customer, but are not being used to provide service on a regular basis. Thus, in order to categorize such blocks of numbers as assigned numbers, carriers may have to decrease the amount [of] numbers set aside for a particular customer. We also clarify that numbers 'working' periodically for regular intervals of time, such as numbers assigned to summer homes or student residences, may be categorized as assigned numbers, to the extent that they are 'working' for a minimum of 90 days during each calendar year in which they are assigned to a particular customer. Any numbers used for intermittent or cyclical purposes that do not meet these requirements may not be categorized as assigned numbers, and must be made available for use by other customers.").

USAC to verify and audit, which numbers are cyclical versus which numbers are not cyclical? If not, would excluding such numbers be consistent with our proposed goals for contribution reform? What are the implications of excluding such numbers in the contribution base? Would excluding these numbers be consistent with the requirements of section 254(d)? What would be the policy justifications for excluding or including these numbers in the contribution base? For example, one policy reason for assessing cyclical numbers would be that each cyclical number obtains the full benefits of accessing the public network. If cyclical numbers are not excluded from the definition of assessable numbers, should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the count of numbers that would fall into the category of cyclical numbers, and explain how the Commission and USAC would verify and audit the use of such numbers.

302. *Assigned but Not Operational Numbers.* Section 52.15 of our rules define "assigned numbers" as numbers that have been assigned to a customer (within a period of five days or less) but have not yet been put into service.[488] Since providers generally do not bill for services that have yet to be provisioned and therefore are not compensated for services during the pendency of the service order, should such numbers be excluded from the definition of Assessable Numbers? We seek comment on whether our definition of assessable numbers should include numbers that are not yet operational to send or receive calls. Would it be consistent with the "equitable and non-discriminatory" language in section 254(d) to exclude these numbers? Would the exclusion of assigned but not operational numbers have a material impact on the contribution base and associated per month charge for assessable numbers? What would be the policy justifications for excluding these numbers from contribution obligations? In the alternative, should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into the category of "assigned but not operational numbers."

303. *Available but Not Assigned Numbers.* We seek comment on whether the definition of assessable numbers should include or exclude other numbers that are held by service providers from the definition of Assessable Numbers. In particular, should we exclude from the definition of Assessable Numbers those numbers that meet the definition of an Available Number, an Administrative Number, an Aging Number, or an Intermediate Number as those terms are defined in section 52.15(f) of the Commission's rules?[489] Carriers will not have an end user associated with a number in any of these categories of numbers. For example, an intermediate number is a number that is "made available for use by another telecommunications carrier or non-carrier entity for the purpose of providing telecommunications service to an end user or customer."[490] Should the receiving provider be responsible for including the number as an Assessable Number only when it provides the number to an end user? We seek comment on whether a numbers-based approach should assess Reserved Numbers. Would it be consistent with the "equitable and non-discriminatory" language in section 254(d) to exclude these numbers? Would the exclusion of available but not assigned numbers have a material impact on the contribution base and associated per month charge for assessable numbers? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into the category of "reserved numbers."

304. *Assigned but Non-Working Numbers.* The 2008 proposals sought comment on excluding non-working telephone numbers from the definition of Assessable Number.[491] Several commenters

[488] 47 C.F.R. § 52.15(f)(iii).

[489] *See* 47 C.F.R. § 52.15(f).

[490] *See* 47 C.F.R. § 52.15(f)(v).

[491] *2008 Comprehensive Reform FNPRM,* 24 FCC Rcd at 6549, App. A, para. 119, at 6682-83, App. B, para. 67, & at 6748, App. C, para. 118.

supported the Commission's proposal that assigned but non-working numbers should be excluded from contributions.[492] Carriers report as assigned numbers for NRUF purposes entire codes or blocks of numbers dedicated to specific end-user customers if at least fifty percent of the numbers in the code or block are working in the PSTN.[493] Would it be consistent with the definition of an Assessable Numbers above for carriers to exclude the non-working numbers in these blocks in their Assessable Number counts, because the non-working numbers portion of these blocks are not "in use by an end user"? We seek to update the record on whether a numbers-based approach, if adopted, should assess non-working numbers. Would it be consistent with the "equitable and non-discriminatory" language in section 254(d) to exclude these numbers? Would the exclusion of non-working numbers have a material impact on the contribution base and associated per month charge for assessable numbers? What would be the policy justifications for excluding these numbers from contribution obligations? Would this create loopholes and make it difficult for the Commission or USAC to audit a provider to determine if non-working numbers were properly counted? In the alternative, should such numbers be assessed at a pro-rated or reduced rate? We also seek comment on the count of non-working numbers, as well as the trend for this category.

305. *Numbers Used for Routing Purposes.* The *2008 Comprehensive Reform FNPRM* sought comment on excluding from the definition of "Assessable Number" numbers that are used merely for routing purposes in a network, as long as such numbers are always—without exception—provided without charge to the end user, are used for routing only to Assessable Numbers for which a universal service contribution has been paid, and the ratio of such routing numbers to Assessable Numbers is no greater than 1.[494] We seek to update the record on whether a NANP number used solely to route or forward calls should be excluded from the definition of Assessable Number in a numbers-based approach, if such routing number were provided for free, and such number routes calls only to Assessable Numbers. Should these numbers be assessed on a different basis, if such routing or forwarding were provided for a fee, such as with remote call forward service or foreign exchange service? We seek comment on whether such numbers should be excluded under a numbers-based contribution system. Would it be consistent with the "equitable and non-discriminatory" language in section 254(d) to exclude these numbers? Would the exclusion of numbers used for routing purposes have a material impact on the contribution base and associated per month charge for assessable numbers? How would the exclusion of routing numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We also seek data on numbers used for routing purposes, including trend information for this category of numbers.

306. *Toll-Free Numbers.* We seek comment on whether a numbers-based methodology should make special accommodations for toll-free numbers. Toll-free numbers are different from other NANP numbers in that the toll-free subscriber pays the long distance charges associated with calls it receives, rather than the persons making the calls.[495] For this reason, the Commission has adopted rules specific to the administration of toll-free numbers, as opposed to local area numbers.[496] Under the current revenues-

[492] *See* Letter from Jeanine Poltronieri, BellSouth, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1 (filed Oct. 24, 2005); Comments of Time Warner Inc., WC Docket No. 06-122, at 5 (filed Aug. 9, 2006); Letter from Patricia Todus, President, ACUTA, & Mark Luker, Vice President, EDUCAUSE, CC Docket No. 96-45, Attach. at 2 (filed May 31, 2006).

[493] *NRO III Order*, 17 FCC Rcd at 304, para. 122.

[494] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6550, App. A, para. 123, at 6683, App. B, para. 71, & at 6748-49, App. C, para. 119.

[495] The term "subscriber" refers to the Toll-Free Subscriber, currently defined in § 52.101 (e) of the rules.

[496] *See* 47 C.F.R. § 52.101 – 52.111.

based system, there is no specific exemption for revenues associated with toll-free numbers. We seek comment on whether the proposed definition for assessable number should exclude from assessment toll-free numbers. Would it be consistent with the "equitable and discriminatory language" in section 254(d) to exclude these numbers? How would the exclusion of toll-free numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We also seek data on toll-free numbers, including trend information for this category of numbers.

307. *All Public or Private Interstate Networks.* We note that the *2008 Comprehensive Reform FNPRM* definition of an "assessable number" would include numbers associated with services that traverse any interstate private or public network, which would not necessarily be limited to numbers for calling that originate or terminate on the PSTN. In the *2008 Comprehensive Reform FNPRM*, the Commission discussed the evolution in communications technology away from the PSTN to alternative networks that may only partially (if at all) traverse the PSTN as one of the causes in the erosion of the contribution base under the current revenue-based methodology.[497] As more services migrate to alternative networks that only partially traverse the PSTN, is there a danger that a NANP numbers-based contributions methodology in time could result in declines in the base, and may conflict with our proposed reform goals of ensuring sustainability in the Fund and promoting fairness in the USF contribution assessment system?[498] Or are NANP numbers being used in association with new technologies that do not originate or terminate on the PSTN? If so, do commenters expect that growth in these alternative usages will outpace other declines? We seek comment generally on whether a contribution system based on NANP numbers would be sustainable as the marketplace evolves in the future.

308. *Numbers Provided to End Users.* We seek comment on which providers should contribute to the Fund under a numbers-based contribution methodology. We seek comment on whether the provider with the retail relationship with the end user should have the contribution obligation under a numbers-based approach.[499] We note that in 2008, several telecommunications providers, including Qwest, XO Communications, AT&T, and Verizon supported the Commission's proposal that providers with the retail relationship to the residential customer should be the providers contributing under a numbers-based methodology.[500] Would such a provider have the most accurate and up-to-date information about how many Assessable Numbers it currently has assigned to end users and how many are in use? If we adopt a different approach for numbers used for consumer versus enterprise services,

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[497] *2008 Comprehensive Reform* FNPRM, 24 FCC Rcd at 6550-51, App. A, para. 126, and at 6683-84, App. B, para. 74, and at 6749-50, App. C, para. 122.

[498] *See, e.g.*, Technical Advisory Council Chairman's Report (Apr. 22, 2011) *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-306065A1.pdf (last visited Apr. 12, 2012); Technology Advisory Council, Summary of Meeting, June 29, 2011 *available at* http://transition.fcc.gov/oet/tac/tacdocs/tac-meeting-summary-6-29-11-final.docx (last visited Apr. 12, 2012) (suggesting the transition away from the PSTN should end by 2018); *USF/ICC Transformation Order and FNPRM*, 26 FCC Rcd at 17670, 17676-17677, paras. 11, 34-35 (citing promotion of the transition to IP networks as a goal of ICC reform).

[499] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6548, App. A, para. 117, at 6680-6681, App. B, para. 64-65, & at 6746-6747, App. C, para. 113 (seeking comment whether the provider with the retail relationship to the end user should be the entity responsible for contributing)

[500] *See* Letter from Melissa E. Newman, Vice President-Federal Regulatory, Qwest, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 7 (filed Sept. 24, 2008); AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 1-2, Letter from Brad E. Mutschelknaus, Counsel for XO Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45 *et al.* Attach. at 9 (filed Oct. 3, 2008); Letter from Donna N. Lampert, Counsel for Google Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45 (filed Oct. 3, 2008).

would the provider with the retail relationship be in the best position to distinguish consumer users from business users?

309. We seek comment on how a numbers-based approach should be implemented with respect to wholesalers, resellers, and other providers incorporating NANP numbers into retail services. Would a system that assesses only numbers provided to end-users invite problems similar to those that exist today under the current revenues-based system, whereby some providers do not contribute for services provided?[501] We note that in some instances wholesalers may provide telecommunications services to customers with numbers. For example, would a numbers-based system create wholesale/reseller/retailer problems of the type discussed earlier in this Notice?[502]

3. Trends in Numbers

310. We seek comment and data on the count of numbers that would be assessable under a number-based USF contribution assessment system. Neustar, the administrator of the NANP, estimates that there are currently 770 million numbers in active use in the United States.[503] As shown in Chart 7 below,[504] one projection suggests there could be over 832 million numbers in active use by 2015.

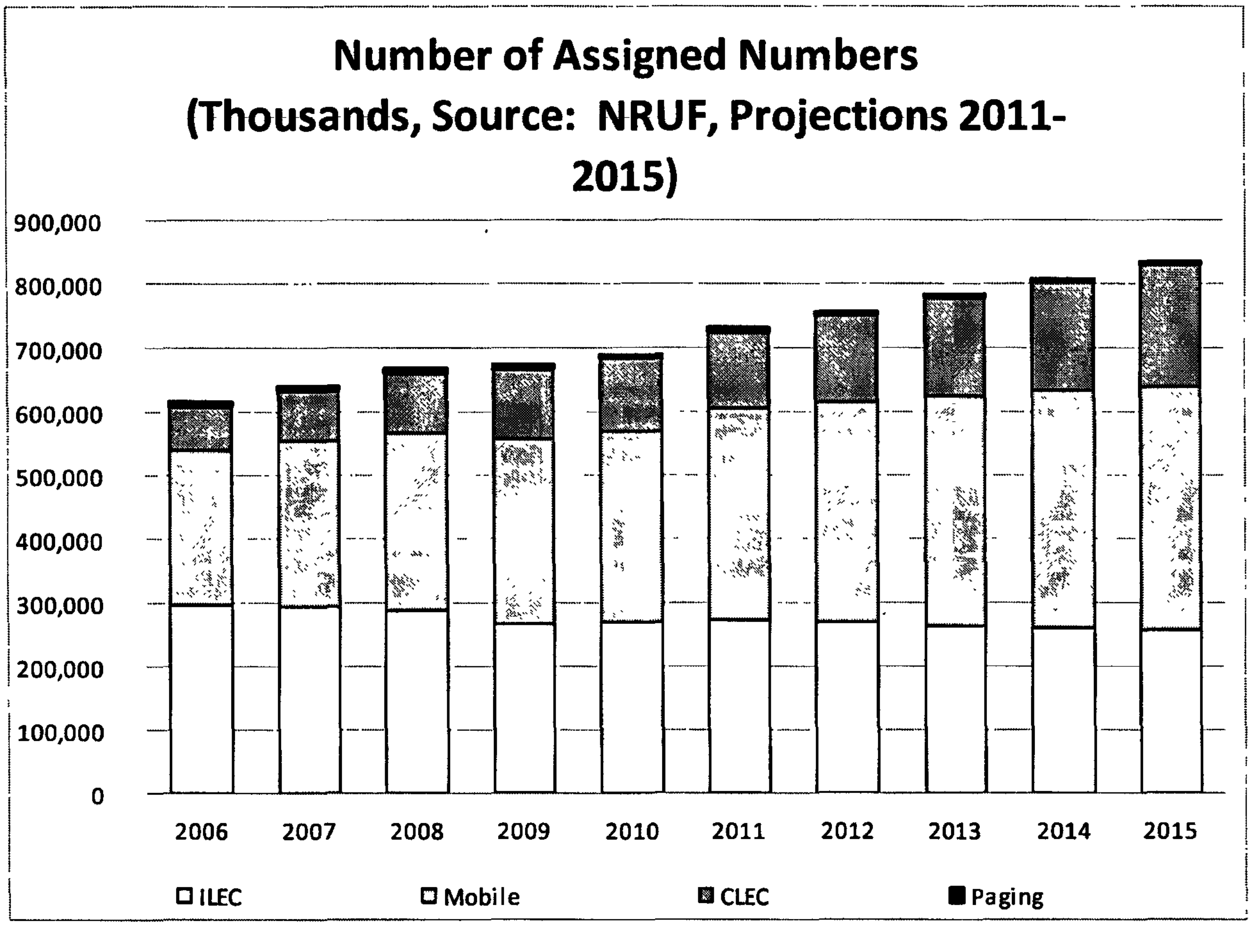
[501] *See supra* Section V.A.4.

[502] *Id.*

[503] Letter from Aaron M. Panner, Counsel for Neustar, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 95-116, WC Docket No. 07-149 (filed Mar. 9, 2012).

[504] The number of assigned numbers presented in Chart 8 is from NRUF Table 1. Missing values for June in the earlier years are interpolated. Historical data are as of end December 2006 to 2010. Projected number of incumbent local exchange carrier (ILEC) assigned numbers and total assigned numbers (ILEC, mobile, competitive local exchange carrier (CLEC), and paging) assume a linear trend. Projected numbers of paging assigned numbers assumes a logarithmic trend. Bass model is used to project mobile wireless assigned numbers. CLEC assigned numbers are assumed to be residual. CLEC figures include numbers provided to VoIP providers.

Chart 7



We seek comment on this estimate and the underlying assumptions, and invite commenters to present their own estimates for the growth or decline in the count of actively-used numbers as well as any additional data regarding their own estimates and the key drivers for such growth or decline. To what extent is the growth in the volume of numbers due to new services and applications, and to what extent is it due to greater penetration of phone service, such as cell phone family plans and usage by younger children? Do commenters believe the volume of numbers will increase in the foreseeable future? Is the growth trend sustainable given anticipated technology changes? What other factors will impact the continued growth in the volume of numbers? What impact would the growth in numbers have on future contribution assessments? To the extent commenters predict the volume of numbers in use will decline over time rather than grow, they should similarly identify the basis for their assumptions and describe in detail their projections for the foreseeable future. What challenges would a numbers-based contribution system face if the volume of numbers were to shrink?

311. We note that in 2008, AT&T and Verizon estimated that under a numbers-based assessment methodology, the contribution would be between $1 and $1.10 per number per month.[505] They further estimated that if the Commission were to move to a numbers-based system, the residential share of the contribution burden would drop from 50 percent to 46 percent, while the business share would rise from 50 percent to 54 percent.[506] We seek to update the record on what the per-number charge

[505] AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 2.

[506] *Id.*

would be, given current and projected trends in numbers and overall universal service demand. Commenters also should provide revised estimates of the impact on different industry contributors, and residential and business consumers, in light of current marketplace developments. Commenters should indicate which definition of "assessable numbers" (and exclusions from assessable numbers) they use in their projections.

4. Differential Treatment of Certain Types of Numbers

312. In this section, we seek comment on whether to provide differential treatment or exclude altogether certain types of numbers from the definition of Assessable Numbers under a numbers-based contribution methodology, and whether doing so would further or undermine our proposed goals for contributions reform. To the extent commenters contend certain types of numbers should be assessed at a different rate, *i.e.* a percentage of the basic per number assessment per month, we ask commenters to include a policy rationale for their proposal. For example, is there a reason why certain types of numbers should be assessed at some fraction, such as 33 or 50 percent, of other numbers based on usage? Would assessing numbers used for certain types of services promote or discourage innovation?

313. *Family Plan Numbers.* In the *2008 Comprehensive Reform FNPRM*, the Commission sought comment on including additional numbers in a family plan in the definition of an Assessable Number because (1) each number associated with a family plan obtains the full benefits of accessing the public network, and (2) an exemption for additional family plan handsets would not be competitively neutral and would advantage wireless family plan consumers over other residential service consumers.[507] Parties have argued in the past that telephone numbers assigned to the additional handsets in family wireless plans should be assessed at a reduced rate, either permanently or for a transitional period.[508] These commenters suggested that assessing contributions at the full per-number rate would cause family plan customers to experience "rate shock."[509]

314. We seek to refresh the record on this issue. We seek comment on whether a numbers-based approach should count equally all numbers that are used for family plans. If we were to adopt a differentiated approach for family plans, how would we define a "family plan" that would be subject to such differential treatment? Would this create incentives for service providers to consolidate accounts and take other measures to characterize service offerings as "family plans"? Would such a rule be limited to mass market consumers, and if so, how should we distinguish between mass market plans and enterprise plans? Would differential treatment of such numbers satisfy the statutory requirements that contributions by telecommunications service providers be equitable and non-discriminatory? What would be the policy justifications for assessing such numbers at a pro-rated or reduced rate? We ask commenters to provide data with underlying assumptions as to the count of numbers that would fall into this category, specifically, how many phone numbers are associated with a primary phone number in a family plan.

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[507] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6560, App. A, para. 145.

[508] *See, e.g.*, AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 4; Comments of CTIA-The Wireless Association, WC Docket No. 06-122, at 5-6 (filed Aug. 9, 2006) (CTIA Aug. 9, 2006 Comments); Comments of Leap Wireless International, Inc., WC Docket No. 06-122 *et al.*, at 2-3 (filed Aug. 9, 2006) (Leap Wireless *2006 Contribution FNPRM* Comments); Letter from Thomas J. Sugrue, Vice President—Government Affairs, T-Mobile, to Marlene H. Dortch, Secretary, FCC, CC Docket Nos. 01-92, 96-45, at 2 (filed Apr. 4, 2006) (T-Mobile Apr. 4, 2006 *Ex Parte* Letter).

[509] AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 2 at 4; CTIA Aug. 9, 2006 Comments at 5–6; Leap Wireless Aug. 9, 2006 Comments at 2–3; T-Mobile Apr. 4, 2006 *Ex Parte* Letter at 2–3. *But see* Letter from Kenneth E. Hardman, American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 2 (filed Oct. 9, 2008).

315. *Services-Based Exceptions.* Prior commenters have proposed that we should exempt from any numbers-based contribution methodology services provided by telematics providers,[510] one-way service providers,[511] two-way paging services,[512] and alarm companies.[513] In 2008, the Commission sought comment on excluding such services from any numbers-based system.[514] Various commenters argued for special treatment for these services.[515] In response, other commenters opposed granting exemptions for these services because it would provide them with an advantage over other services that are required to contribute based on residential telephone numbers.[516] We seek to update the record on these proposals, noting that since 2008, additional marketplace developments have emerged that may similarly not fit neatly into the numbers paradigm, including numbers assigned to devices reliant on mobile broadband, such as data cards, e-readers, and tablet computers. Should these types of numbers be assessed at a different rate, *e.g.,*. a percentage of the basic per number monthly assessment? For example, should a number assigned to a telematics device, where the customer is not paying a monthly fee and the device can only make a "call" in an emergency situation be assessed differently from a number assigned to a consumer cell phone or a business landline? Would exclusion of numbers associated with such services be consistent with the statutory requirement that all carriers providing interstate telecommunications services shall contribute on an equitable and non-discriminatory basis?[517] How

[510] Telematics is a service that is provided through a transceiver, which is usually built into a vehicle but can also be a handheld device, that provides public safety information to public safety answering points (PSAPs) using global positioning satellite data to provide location information regarding accidents, airbag deployments, and other emergencies in real time. *See, e.g.*, Letter from David L Sieradzki, Counsel for OnStar, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1 (filed Mar. 2, 2006); *Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Systems*, CC Docket No. 94-102, Order, 18 FCC Rcd 21531, 21531–33, paras. 2, 8 (2003).

[511] One-way services include, but are not limited to, one-way paging, electronic facsimile (e-fax), and voicemail services (other than stand-alone voicemail services, as discussed above).

[512] *See, e.g.*, Letter from Matthew Brill, Counsel for USA Mobility, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 2 (filed Oct. 24, 2008) (opposing the assessment of a numbers-based fee on paging carriers and their customers); Letter from Kenneth Hardman, Counsel for the American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at Attach. (filed Oct. 22, 2008).

[513] *See* Letter from Donald J. Evans, Counsel for Corr Wireless Communications, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 01-92, WC Docket No. 06-122, WT Docket No. 05-194, at 2 (filed Oct. 23, 2008).

[514] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6558-59, App. A, para. 144, at 6690-91, App. B, para. 92, & at 6756-57, App. C, para. 139.

[515] *See* Letter from Ari Q. Fitzgerald, Counsel, Mercedes-Benz USA, LLC, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Apr. 12, 2006); *see also* Letter from John E. Logan, ATX Group, Inc., to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (filed Mar. 16, 2006); Letter from David M. Don, Counsel for j2 Global Communications, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 1 (filed Nov. 18, 2005); Letter from William B. Wilhelm, Jr., Counsel for Bonfire Holdings, to Tom Navin, Chief, Wireline Competition Bureau, FCC, CC Docket No. 96-45 (filed Feb. 13, 2006); Comments of j2 Global Communications, Inc., CC Docket No. 96-45, at 2 (filed Feb. 28, 2003); Letter from Kenneth E. Hardman, Counsel for the American Association of Paging Carriers, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1 (filed Oct. 6, 2005); Letter from Frederick M. Joyce, Counsel for USA Mobility, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, Attach. at 1–3 (filed Mar. 22, 2006).

[516] *See, e.g.,* Letter from James S. Blaszak, Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (filed Aug. 15, 2006) (Ad Hoc Telecommunications Users Aug. 15, 2006 Comments); Letter from Douglas D. Orvis, Counsel for IDT Corporation, to Marlene H. Dortch, Secretary, FCC, Docket No. 96-45, Attach. A at 5 (filed Feb. 23, 2006).

[517] 47 U.S.C. § 254(d).

would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers altogether from contribution obligations? We ask commenters to provide data as to the volume of numbers that would fall into this category.

316. *Numbers Provided to Lifeline Subscribers.* In 2008, the Commission sought comment on a proposal to prohibit contributors from passing through any universal service charges to their Lifeline subscribers.[518] Several contributors suggested that telephone numbers assigned to Lifeline subscribers should be excluded from the universal service contribution base and providers of Lifeline service should not pass-through contribution assessments to Lifeline subscribers.[519] As a threshold matter, we seek comment on whether the Commission has statutory authority to exclude numbers associated with service offerings provided to Lifeline subscribers, given the mandatory contribution obligation for telecommunications service providers. To the extent such numbers are provided with telecommunications services, would it be consistent with our section 10 authority to forebear from imposing contribution obligations on such numbers?[520]

317. In our prior proceedings, consumer groups, large telecommunications customers, LECs, and wireless providers all supported an exemption for numbers provided to Lifeline subscribers, and no commenter opposed an exemption for numbers provided to Lifeline subscribers.[521] We seek to update the record on whether it is appropriate to not assess numbers for Lifeline subscribers, if we were to adopt a numbers-based contribution methodology. We note that today there are approximately 14.8 million Lifeline subscribers.[522] How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Alternatively, should such numbers associated with Lifeline services be assessed at a pro-rated or reduced rate, and if so, what would be an appropriate amount?

318. *Free Services.* Some providers have argued in the past that their services are offered on a free, or nearly-free basis, and if these services are assessed on a per telephone number basis, providers will no longer be able to offer such services for free.[523] In 2008, the Commission sought comment on a proposal to include free services in a number-based contributions system, noting that although these services may be marketed as "free" to the end user, these services are not truly free.[524] Commenters,

[518] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6557, App. A, para. 141, at 6683, 6689, App. B, para. 71, 90, & at 6756-57, App. C, para. 136, 137.

[519] *See, e.g.*, Letter from Mary L. Henze, AT&T Services, Inc. & Kathleen Grillo, Verizon, WC Docket No. 06-122, CC Docket No. 96-45, Attach. at 4 (filed Oct. 20, 2008) (AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter) (proposing that numbers assigned to Lifeline subscribers be excluded from the monthly number count for contribution purposes).

[520] We seek comment below on the separate question of whether ETCs should be prohibited from passing through to Lifeline subscribers any contribution obligations they may have with respect to Lifeline services. *See infra* Section VII.C.

[521] *See, e.g.*, CTIA Aug. 9, 2006 Comments at 5; Reply Comments of Consumers Union *et al.*, WC Docket No. 05-337, CC Docket No. 96-45, at 58 (filed June 2, 2008); Letter from James S. Blaszak, Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, at 4 (filed Nov. 19, 2007); AT&T and Verizon Sept. 11, 2008 *Ex Parte* Letter, Attach. 1 at 5.

[522] USAC Second Quarter 2012 Filings, LI08 - Lifeline Subscribers by State or Jurisdiction.xls *available at* http://www.usac.org/about/tools/fcc/filings/2012/q2.aspx.

[523] *See, e.g.*, j2 Global Feb. 28, 2003 Comments at 7 (arguing that a connections-based universal service methodology would force many heavily used one-way communications services out of existence).

[524] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6558-59, App. A, para. 144, at 6689-90, App. B, para. 91, & at 6756-57, App. C, para. 139.

other than the providers of such free services, generally supported the inclusion of these numbers.[525] We seek to refresh the record on this issue. Since commercial providers of free or nearly-free services generate revenue in other ways, such as through advertising or through more sophisticated paid service offerings or product offerings, should they be exempt from contribution obligations? Whether these providers continue to offer free services would be a business decision based upon the circumstances of the particular business. Would the inclusion of such services under a numbers-based approach be equitable? Some commenters have argued in the past that assessing a per-number contribution obligation on these services is consistent with prior Commission determinations that services that benefit from a ubiquitous public network are fairly charged with supporting the network.[526] We ask commenters to provide estimates with supporting data regarding the number of numbers that would fall into this category.

319. *Community Voice Mail.* In 2008, the Commission sought comment on whether stand-alone voice mail service, provided for free to "phoneless" people, should be exempted from direct contribution obligations under a numbers-based methodology.[527] Such services are provide for free, and therefore generate no revenues. Provided we did not otherwise exempt free services, we seek comment on whether a numbers-based approach should assess numbers associated with services such as community voicemail. Would exclusion of these numbers satisfy the statutory requirements for universal service contributions from providers of telecommunications services? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into this category.

320. *TRS and VRS Numbers.* Some parties have previously suggested that if we adopt a numbers-based contribution methodology, we should exempt Internet-based telecommunications relay services (TRS), including video relay services (VRS) and IP Relay services.[528] Such services are provided for free to people with hearing and speech disabilities, under Congressional mandate.[529] The *2008 Comprehensive Reform FNPRM* did not propose to exempt these services, because the treatment of costs related to the acquisition of numbers for TRS and VRS was pending in another proceeding.[530] We seek to update the record on this issue. Would inclusion of these numbers satisfy the statutory

[525] *See, e.g.*, Ad Hoc Telecommunications Users Aug. 15, 2006 Comments at 2 (stating that there should only be an exemption for Lifeline subscriber numbers).

[526] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6558-59, App. A, para. 144, at 6689-90, App. B, para. 91, & at 6756-57, App. C, para. 139.

[527] *Id.* at 6557-58, App. A, para. 142. Appendix B and C proposals were against an exemption for such services. *Id.* at 6690-91, App. B, para. 92, & at 6756-57, App. C, para. 139. Specifically, Community Voice Mail National (CVM) argued that stand-alone voice mail services that consist of free voice mail access to "phoneless" people should be exempt. Letter from Jennifer D. Brandon, Executive Director, Community Voice Mail National, to Tom Navin, Wireline Competition Bureau, FCC, CC Docket No. 96-45, at 1 (filed May 30, 2006) (CVM provides "free, personalized voicemail access to people in crisis and transition (homeless, victims of domestic violence, and other 'phoneless' people").

[528] *See* Letter from Deb MacLean, Communication Access Center for the Deaf and Hard of Hearing, *et al.* to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, at 1–2 (filed Sept. 29, 2008).

[529] 47 U.S.C. §§ 151, 152, 154(i), 154(j), 225, 251, 254, 303(r)

[530] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6558-59, App. A, para. 144, at 6691, App. B, para. 91, & at 6756-57, App. C, para. 139. In each proposal, the Commission deferred to an open TRS proceeding in which the Commission considered whether certain costs related to the acquisition of ten-digit numbers by TRS customers should be reimbursed by the TRS Fund. *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 02-123; E911 Requirements for IP-Enabled Service Providers, WC Docket No. 05-196, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 11591, 11646, para. 100 (2008).

requirements for universal service contributions? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into this category.

321. *Other Exemptions.* Are there other types of numbers or services that should be excluded from a numbers-based contribution mechanism, if we were to adopt such an approach? For instance, should we adopt exemptions for numbers used by non-profit health care providers,[531] libraries, colleges and universities, entities that typically administer their own numbers? Would inclusion of these numbers satisfy the statutory requirements for universal service contributions? How would the exclusion of such numbers impact a numbers-based regime? What would be the policy justifications for excluding these numbers from contribution obligations? Should such numbers be assessed at a pro-rated or reduced rate? We ask commenters to provide data as to the volume of numbers that would fall into each category of proposed exemptions.

5. Use of a Hybrid System with a Numbers-Component

322. We seek specific comment on adopting a hybrid numbers-connections based methodology. As previously discussed, the Commission sought comment in 2008 proposals on two hybrid approaches. Under the 2008 proposals, consumer numbers would be assessed on a numbers-based methodology, and business lines would be assessed on a connections-based methodology.[532] The Commission has also sought comment on a hybrid numbers-connections methodology that would assess providers a flat fee for each assessable NANP telephone number and assess services not associated with a telephone number as connections.[533] A hybrid numbers and connections system may have advantages over a numbers-only system insofar as it captures services that are provided without numbers. In other respects, however, such a system might incorporate all of the potential disadvantages of both numbers-based and connections-based systems. Moreover, regardless of the particular methodologies used, hybrid systems may be more complex and expensive to administer than a single system.[534] Should carriers that

[531] This proposal is consistent with the current exemption under the revenues contribution methodology. *See* 47 C.F.R. § 54.706(d).

[532] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6536, App. A, para. 92 & at 6735, App. C, para. 88.

[533] In 2002, the Commission sought comment on a proposal to assess providers based on telephone numbers assigned to end users, but to assess special access and private lines that do not have assigned numbers based on capacity. *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24995–97, paras. 96–100. In 2008, the Commission sought comment on two proposals to assess contributions based on numbers for residential services and connections for business services. *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6536–64, paras. 92–156 (App. A); *id.* at 6735–6762, paras. 88–151 (App. C). The Commission has also previously sought comment on a hybrid connections and revenues system. *See 2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24991–95, paras. 86–95.

[534] *See, e.g.*, Verizon and Verizon Wireless Comments, GN Docket No. 09-47 *et al.*, at 9 (filed Dec. 7, 2009) (arguing that a numbers-only system is preferable to a numbers-connections system or a numbers-revenues system because there are significant costs associated with tracking and assessing contributions based on multiple contribution units, regardless of the mechanisms involved); Comments of Broadview Networks, Inc. *et al.*, GN Docket No. 09-47 *et al.*, at 15-17 (filed Dec. 7, 2009) (describing burdens imposed by hybrid numbers and revenues systems and hybrid numbers and connections systems); TCA Comments, GN Docket No. 09-47 *et al.*, at 4 (filed Dec. 7, 2009) (arguing that a revenues-connections methodology would add unnecessary complexity and consumer confusion).

do not have working numbers or end-user connections continue to contribute based on their interstate telecommunications revenues?[535] We ask parties to refresh the record and seek comment on this analysis.

323. To what extent would a hybrid system create competitive distortions in the marketplace? Any system that would make distinctions between mass market and enterprise users would require an ability for contributors in the first instance, and USAC and this Commission, to distinguish between the two, in order to ensure that contributions are appropriately made. Would such a system advance our proposed reform goals of administrative efficiency, fairness and sustainability? Would a hybrid system satisfy the statutory requirements that contributions be equitable and non-discriminatory? Would using a different methodology for contributions for the provision of service to businesses dissuade investment in higher speed and robust communications facilities?[536] Recognizing that the answer may depend on the specific tiers that are adopted, and the assessment levels for each tier, would such a system, potentially, unfairly advantage or disadvantage purchasers of higher speed connections?[537]

324. Commenters who support a numbers-connections methodology should address the feasibility of the methodology in light of recent industry developments and the continuing evolution of telecommunications technology.[538] Commenters should also address the advantages and disadvantages of such a system. Are there any entities that would be contributing for the first time, if we were to adopt a hybrid approach? We specifically seek comment on whether a hybrid numbers-connections methodology would better meet our goals for reform in comparison to the options discussed above, including an improved revenues system, a connections-based approach, and a numbers-based contribution assessment system. We ask parties claiming significant costs or benefits of a hybrid approach to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

6. Policy Arguments Related to Numbers-Based Assessment

325. In the *2008 Comprehensive Reform FNPRM*, the Commission sought comment on several potential benefits of a numbers-based contribution methodology. The Commission noted that adoption of a numbers-based approach would benefit both consumers and contributors by simplifying the basis for assessments and stabilizing assessments at a set amount (for example, $1.00 per month per consumer telephone number).[539] The Commission also noted that a numbers-based contribution methodology could benefit consumers because it would be technologically and competitively neutral in that a consumer would pay the same universal service charge regardless of whether the consumer receives service from a cable provider, an interconnected VoIP provider, a wireless provider, or other wireline

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[535] CTIA Aug. 9, 2006 Comments at 5 (carriers without working numbers or end-user connections could contribute based on their interstate revenues).

[536] Comments of Verizon and Verizon Wireless, WC Docket No. 05-337 *et al.*, at 37-39 (filed Nov. 26, 2008) (Verizon Nov. 26, 2008 Comments) (assessing business lines that are equivalent to residential broadband products at a higher business rate will discourage providers from "rolling out innovative, high speed products" at reasonable prices).

[537] *See* Letter from J.G. Harrington, ACUTA, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122, CC Docket No. 96-45, Attach. at 14 (filed May 31, 2006)(capacity tiers should not provide an unfair advantage or disadvantage for purchases of higher-capacity connections).

[538] *See* AT&T Aug. 24, 2010 *Ex Parte* Letter at 1 ("While a numbers only-based system was adequate just a few years ago . . . changes in the marketplace and the direction of USF reform require a more inclusive methodology.")

[539] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6543, App. A, para. 105, at 6675-76, App. B, para. 53, & at 6742, 6743, App. C, para. 103, 106.

provider.[540] As a result, the Commission stated that such an approach would enable consumers to choose the providers and services they want without regard to any distortions that may otherwise be caused by differing contribution charges.[541] The *2008 Comprehensive Reform FNPRM* also noted that, by subjecting contributors to the same regulatory framework for assessments on services regardless of technology, the numbers-based methodology would eliminate incentives under the current revenues-based system for providers to migrate to services and technologies that are either exempt from contribution obligations or are subject to safe harbors.[542]

326. We seek to refresh the record on the potential benefits of a numbers-based contribution methodology. We also seek comment on whether a numbers-based system (compared to a connections-based system or the current revenues-based system) would be simpler to understand. Would it be competitively neutral? Would a numbers methodology be inequitable or discriminatory for low volume users?[543] Would a numbers-based system, be easier to audit for compliance? Could such a system reduce compliance costs for contributors? Could it also reduce marketplace distortions that may be present in either the consumer or enterprise markets? We ask parties claiming significant costs or benefits of a numbers-based system to provide supporting analysis and facts for such assertions, including an explanation of how data were calculated and all underlying assumptions.

327. In the past, several commenters have argued that moving to a numbers-based approach where numbers are assessed with fixed amounts is disproportionately burdensome for low-income consumers and other users on low-cost service plans.[544] Are there modifications that could be made to a numbers-based methodology to make assessment fairer to consumers on low-cost service plans? Would a numbers-based system shift the universal service contributions from higher-volume users of communications services to lower-volume users? Overall, would low-income households pay a larger percentage of communications bills in contribution assessments than higher income households compared to today?

328. Would adoption of a numbers-based contribution approach discourage the emergence of innovative new functions and services, such as "follow-me" services or unified communications applications?[545] If the Commission were to adopt a numbers-based contribution methodology, how could it structure such a system so as not to inhibit innovation? For example, should the Commission exempt numbers associated with certain services to be exempt for a defined period of time, analogous to the Commission's pioneer's preference rules?[546]

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[540] *Id.* at 6554, App. A, para. 108, at 6676-77, App. B, para. 55, & at 6742-43, App. C, para. 104. *But see supra* Section V.C.4, para. 311 (discussion of family plans).

[541] *2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6554, App. A, para. 108, at 6676-77, App. B, para. 55, & at 6742-43, App. C, para. 104.

[542] *Id.* at 6544, App. A, para. 109, at 6677, App. B, para. 56, & at 6743, App. C, para. 105.

[543] Comments of AT&T, Inc., WC Docket No. 05-337 *et al.*, at 47-49 (filed Nov. 26, 2008) (AT&T Nov. 26, 2008 Comments).

[544] *See, e.g.*, IDT Corp. May 2008 Comments at 1; Leap Wireless Aug. 9, 2006 Comments at 3; and CTIA Aug. 9, 2006 Comments at 4.

[545] *See, e.g.,* Google Voice, *available at* http://www.google.com/googlevoice/about.html (last visited Apr. 10, 2012); Twilio Home Page, *available at* http://www.twilio.com/ (last visited Apr. 10, 2012).

[546] The Commission's pioneer's preference program was established in 1991 to provide a means of extending preferential treatment in the Commission's spectrum licensing processes to parties that demonstrated their responsibility for developing new spectrum-using communications services and technologies. Under the pioneer's preference rules, a necessary condition for the grant of a preference was that the applicant demonstrate that it had developed the capabilities or possibilities of a new service or technology, or had brought the service or technology to (continued...)

329. *Distinguishing Telecommunications from Non-Telecommunications.* Would a numbers-based methodology more easily accommodate new services and technologies without requiring service providers or the Commission to make service classification judgments?[547] We seek comment above on approaches to provide clarity to contributors with respect to specific services, without the need to classify those services as either information services or telecommunications services.[548] We also seek comment on assessing revenues associated with information services.[549] In light of those potential approaches to determining who should contribute, would a numbers-based methodology continue to offer advantages as a relatively simple basis for assessing those providers' contributions? To what extent have numbers become increasingly associated with information services? Would a numbers-based assessment mechanism ensure that contribution obligations are applied in a fair and predictable manner to all interstate telecommunications providers?

330. *Jurisdictional Considerations.* As discussed above, the current revenues-based system requires contributors to separately report revenues derived from interstate, intrastate and international services.[550] The Commission and industry participants have suggested in the past that a connections-based system might mitigate the need to differentiate between interstate and intrastate jurisdictions.[551] We seek comment on whether the same is true for a numbers-based system.

331. Given that NANP numbers enable users to connect with other users across state lines, is it reasonable to conclude that a numbers-based methodology would be directed at interstate providers and therefore consistent with the statutory requirements of section 254? We seek specific comment on the implications of the Fifth Circuit's *TOPUC* decision, which held that section 2(b) of the Act prohibits the Commission from assessing revenues associated with intrastate telecommunications service.[552] Does *TOPUC* impose any limitations on a numbers-based contribution system, particularly in light of the Commission's authority over numbering in section 251? We also seek comment on whether *TOPUC* raises any concerns related to assessing international services. If so, we seek comment on whether a numbers-based system should include an exemption similar to the limited international revenues exemption under the current revenues-based system for providers that are primarily international in nature,[553] and if so, how such an exemption should be crafted.

(Continued from previous page)
a more advanced or effective state. *See* Office of Engineering and Tech. *Pioneer's Preference Program*, FCC, *available at* http://transition.fcc.gov/oet/faqs/pioneerfaqs.html (last updated Jan. 13, 2000).

[547] AT&T Nov. 26, 2008 Comments at 50; Verizon Nov. 26, 2008 Comments at 32-33 (supporting the argument that a numbers methodology avoids the need to distinguish between types of revenues, or between telecommunications and information services).

[548] *See supra* Section IV.B.

[549] *See supra* Section V.A.1.

[550] *See supra* Section II.A.

[551] *2002 First Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 3784, para. 71; *2002 Second Contribution Methodology Order and FNPRM*, 17 FCC Rcd at 24985, para. 70; *see, e.g.*, USTelecom Nov. 26, 2008 Comments.

[552] *TOPUC*, 183 F.3d at 446-48. *But see* State Members of Joint Board CAF Comments at 121-24 (both the Commission and states should be able to assess interstate and intrastate telecommunications revenues; *TOPUC* was wrongly decided).

[553] Under the LIRE, a contributor need not contribute on its projected collected international end-user telecommunications revenues if that contributor's projected collected interstate end-user telecommunications revenues comprise less than 12 percent of its combined projected collected interstate and international end-user telecommunications revenue. 47 C.F.R. § 54.706(c).

7. Implementation

332. Implementing a numbers-based system would require revised data collection and reporting requirements. In this section, we seek comment on how the Commission would transition to a numbers-based system. We also ask whether adopting a numbers-based system would increase compliance burdens if states that administer their own universal service programs continue to employ revenues-based assessments.

333. *Reporting of Numbers.* We seek comment on how to implement reporting requirements under a numbers-based contributions system. Under the existing revenue-based contribution methodology, contributors report to USAC their historical gross-billed, projected gross-billed, and projected collected end-user interstate and international revenues quarterly on the FCC Form 499-Q and their gross-billed and actual collected end-user interstate and international revenues annually on the FCC Form 499-A.[554] USAC then bills contributors for their universal service contribution obligations on a monthly basis based on the contributors' quarterly projected collected revenue.[555] Contributors report actual revenues on the FCC Form 499-A, which USAC uses to perform true-ups to the quarterly projected revenue data.[556]

334. We seek comment on how a numbers-based system should be implemented and the transition process, should we adopt such a system. In particular, we seek comment on the specific changes necessary to enable USAC to collect contributions under a numbers-based system. How would contributors report the assessable numbers (and potentially speed or capacity under a numbers-connection hybrid system) under a numbers-based assessment methodology? Should we continue to use a FCC Form 499 (with changes), leverage the existing NRUF reporting requirements, or develop a completely new data collection?[557] What would be the administrative impact of a new reporting system on providers and on USAC as the administrator of the Fund? If the Commission were to adopt a numbers-based methodology, should contributors be required to report assessable numbers on a monthly basis, quarterly basis or some other period? Currently, under the revenues-based system, revenues are reported quarterly (with annual true-up reporting). Should we retain the same quarterly and annual true up reporting periods for a numbers-based system? Would a monthly reporting requirement create a burden that is not outweighed by the simplification posed by a numbers-based system? Should the information be reported as actual numbers, forecasted numbers, or historical numbers? Would historical reporting unnecessarily complicate the numbers reporting system? Is there any information that would be particularly difficult to report on a monthly basis? Would a more frequent reporting period be less likely to require adjustments to the contributions requirements? Would longer or shorter reporting intervals advantage or disadvantage some types of providers more than others?

335. *Costs Associated with Implementing a Numbers System.* We seek comment on what out-of-pocket costs contributors would incur to implement a new numbers-based contribution methodology, both in the short term to transition to a new system and on an annual basis once a new system is in place. Commenters should explain the categories of costs that would be incurred. To the extent possible, commenters should quantify these costs and indicate how they compare to the costs of complying with the existing revenues-based system. Would contributors be able to use their current billing and operating systems to report numbers for universal service contributions? If not, what would be the incremental costs associated with modifying billing systems and internal controls and processes to collect and track

[554] *See* 47 C.F.R. §§ 54.706(b), 54.709, 54.711.

[555] *See* 47 C.F.R. §§ 54.702(b), 54.709(a).

[556] *See* 47 C.F.R. § 54.709.

[557] The NRUF reports are due on or before February 1 and on or before August 1 of each year. *See* 47 C.F.R. § 52.15(f)(6).

numbers for purposes of reporting and contributing to the Fund? Would contributors have to implement entirely new systems to track the type of data needed to report assessable numbers? Are there cost savings that could be realized by moving away from the current revenues-based system, which requires contributors to report revenues quarterly (projected) and annually (actual) for USF purposes, and potential efficiencies based on other existing number reporting requirements for other regulatory requirements? Would those costs vary depending on the definition of assessable numbers? We also seek comment on whether the cost of updating billing and internal systems for this narrow regulatory purpose would outweigh any benefit achieved. Would increased operational costs of moving to a numbers system negatively impact certain carriers as compared to other carriers? Commenters should provide data on any such increased costs.

336. We also seek comment and data on other costs associated with a numbers-based system, and in particular ask providers if there are any costs that are not discussed above. Would the cost of moving to a new numbers system be relatively greater for certain classes of customers or certain industry segments? To what extent would this analysis change depending on how "assessable numbers" is defined and assessed? Do the additional costs associated with implementation and the reporting requirements outlined below outweigh the benefits of moving to a numbers-based methodology?

337. *Auditing.* We seek comment on how to define an "Assessable Number" to make it easier to audit to ensure that contributors are reporting accurately, and that the system operates in an equitable and nondiscriminatory manner, maintains stability in the contribution base, and minimizes market distortions and gamesmanship. We seek comment on whether we should allow carriers to self-certify which numbers are assessable numbers for contributions purposes. We also seek comment on whether we should modify the current recordkeeping requirements to further improve the auditing process for both contributors and auditors. Should we adopt additional rules or provide further guidance regarding the types of records and supporting documentation that should be maintained? Proponents of a numbers-based system should provide specific details about how contributors would report their data and how auditors could verify the accuracy of assessable numbers reported.

338. *Effect on Other Programs.* We ask parties to provide comment on the impact of moving to a numbers-based approach on the Interstate TRS, North American Numbering Plan, Local Number Portability, and regulatory fees administration programs.[558] The revenue information currently reported on an annual basis in FCC Form 499-A is also used to calculate assessments for these programs.[559] We ask parties to provide comment on the best approach for ensuring proper funding of these programs were we to move to a numbers-based methodology.[560] Should contributors continue reporting gross billed end-user revenues for purposes of these programs, and if so, should they continue to report on an annual basis? Should we simplify the Form 499 for purposes of revenue reporting in that instance? Are there alternative ways to calculate contributions for these programs?

339. *Transition.* A numbers-based methodology would constitute a change from the current revenue-based system and would likely require a transition period, especially if reporting entities need to implement new billing and accounting systems and a process for recording number counts in a manner that is auditable. In the *2008 Comprehensive Reform FNPRM*, the Commission proposed a 12-month transition period, that including six months where contributors reported their numbers on a monthly basis in addition to their revenues.[561] In the past, commenters have supported a 12-month transition period.[562]

[558] *2001 Contribution Methodology Notice*, 16 FCC Rcd at 9909, para. 38.

[559] *See supra* n.454.

[560] *Id.*

[561] *See 2008 Comprehensive Reform FNPRM*, 24 FCC Rcd at 6563, App. A, para. 154, at 6694, App. B, para. 102, & at 6761-6762, App. C, para. 149.

We seek to refresh the record on whether a 12-month period would give contributors sufficient time to adjust their record-keeping and reporting systems so that they may comply with modified reporting procedures. Could such a transition be implemented within a given calendar year, and if so, should it be tied in some fashion to the current quarterly filing of Form 499-Q? We seek comment on what steps would need to be taken to transition between the current revenues-based system and a numbers-based system and how much time would be needed to ensure that the new process is applied in an equitable manner. Commenters should indicate whether the other changes discussed in this Notice would require less or more time to implement.

340. If we were to adopt a numbers-based methodology, the Commission and USAC would likely need to go through multiple reporting cycles to determine whether information is being reported consistently and to determine whether carriers understand what information they are being asked to report. In addition, contributors and USAC would need time to update their billing and tracking systems to accommodate the new methodology. Is a 12-month transition period sufficient to ensure that all affected parties would have adequate time to address any implementation issues that arise? How much time would be necessary for contributors, including new contributors, to adjust their record-keeping and reporting systems in order to comply with new reporting procedures? Are there considerations that would favor a longer or shorter transition period? Would there be a benefit in adopting different transitional periods for residential and business markets?

341. We also seek comment on requiring dual reporting during all or some of the transition time – where reporting entities would continue to report and pay under the current revenues-based system, while they also begin reporting under the new system. Would having providers report under both systems for a specified amount of time during the transition provide the opportunity for both providers and USAC to address unforeseen implementation issues that are likely to arise under the new reporting system? Should new filers begin reporting sooner since USAC does not have any historical data on their revenues and services?

VI. IMPROVING THE ADMINISTRATION OF THE CONTRIBUTION SYSTEM

342. Consistent with our overall proposed goals for contributions reform, in this section, we seek comment on potential rule changes that could be implemented to provide greater transparency and clarity regarding contribution obligations, reduce costs associated with administering the contribution system, and improve the operation and administration of the contributions system. For each issue discussed below, we seek comment on whether and how the potential rule change could or should be implemented on an accelerated timetable, in advance of other reforms under consideration in this proceeding, as well as the potential reduction in compliance costs associated with adopting each proposal.

343. We request clear and specific comments on the type and magnitude of likely benefits and costs of each of the rules discussed in this section, and request that parties claiming significant costs or benefits provide supporting analysis and facts, including an explanation of how data were calculated and identification all underlying assumptions.

A. Updating the Telecommunications Reporting Worksheet

344. Each year, the Wireline Competition Bureau, on delegated authority, releases updated instructions for the Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q).[563] These

(Continued from previous page)
[562] *See* AT&T and Verizon Oct. 20, 2008 *Ex Parte* Letter, Attach. at 3 (proposing a 12-month transition to the new mechanism taking effect).

[563] *See* 47 C.F.R. § 54.711(c). The Commission has delegated authority to the Wireline Competition Bureau (Bureau) to modify the Telecommunications Reporting Worksheets (FCC Forms 499-A and 499-Q) as "necessary to
(continued...)

Worksheets are submitted by contributors to USAC, which uses the information contained therein to calculate each individual contributor's contribution requirements. In this section, we seek comment on whether we should modify the process by which these forms are revised by soliciting public comment from interested parties prior to adopting revisions to the Telecommunications Reporting Worksheet and instructions. We also seek comment on whether to adopt a rule specifying that the worksheets and instructions constitute binding agency requirements.

345. *Background.* Historically, the Bureau has released annual revisions to the Telecommunications Reporting Worksheets and accompanying instructions within one to two months prior to the April 1 deadline for the annual submission of the Form 499-A.[564] In so doing, the Bureau updates the worksheets and makes non-substantive changes to the accompanying instructions to reflect new Commission rules or requirements enunciated in orders and provide guidance on issues of rule interpretation.[565] We understand that parties typically refer to the worksheet instructions for assistance in complying with our revenue reporting and USF contribution requirements. Moreover, as reflected in USAC audit reports, USAC considers the worksheet instructions, as well as Commission orders, as the Commission's public announcement of how our rules should be interpreted. The Commission has not, however, adopted those instructions pursuant to the rulemaking provisions of the Administrative Procedure Act.[566] Therefore, questions have been raised about whether the instructions have the force of binding rules, or whether they constitute non-binding agency guidance.[567] Other parties have argued that the Commission should provide a more transparent process for modifying the Form 499 instruction changes.[568]

346. *Discussion.* We propose to adopt a formalized annual process for the Bureau to update and adopt the Telecommunications Reporting Worksheets and their accompanying instructions. We propose to amend section 54.711 to include the following proposed rule:

> *Telecommunications Reporting Worksheet Revisions. The Wireline Competition Bureau shall annually issue a Public Notice seeking comment on the Telecommunications Reporting Worksheets and accompanying instructions. No later than 60 days prior to the annual filing deadline, the Wireline Competition*

(Continued from previous page)
the sound and efficient administration of the universal service support mechanisms." *See id.* We note that the Commission has an analogous process for the E-rate Eligible Service List. *See* 47 C.F.R. § 54.522.

564 For example, for the Form 499-A due on April 1, 2012, the Bureau released the revised form and instructions on March 5, 2012.

565 *See, e.g., Wireline Competition Bureau Releases 2012 Annual Telecommunications Reporting Worksheet (FCC Form 499-A) and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, DA 12-337 (Wireline Comp. Bur., rel. Mar. 5, 2012) (*2012 FCC Form 499 Public Notice*); *Wireline Competition Bureau Releases 2011 Annual Telecommunications Reporting Worksheet (FCC Form 499-A) and Accompanying Instructions,* WC Docket No. 06-122, Public Notice, 26 FCC Rcd 2272 (Wireline Comp. Bur. 2011); *Wireline Competition Bureau Announces Release of the Revised 2010 FCC Forms 499-A and 499-Q and Accompanying Instructions*, WC Docket No. 06-122, Public Notice, 25 FCC Rcd 1778 (Wireline Comp. Bur. 2010).

566 5 U.S.C. § 553.

567 *See, e.g., Global Crossing Order*, 24 FCC Rcd at 10828, paras. 13-14 ("Although the Commission has not dictated how a carrier may meet the reasonable expectation standard, it has provided *guidance* in the FCC Form 499-A instructions"; "USAC relied upon the *guidance* in the Commission's 2005 FCC Form 499-A") (emphasis added); *Universal Service Contribution Methodology; Request for Review of a Decision of the Universal Service Administrator by Network Enhanced Telecom, LLP*, WC Docket No. 06-122, Order on Reconsideration, 26 FCC Rcd 6169, 6171 (Wireline Comp. Bur. 2011) (same).

568 *See, e.g.*, USTelecom Mar. 28, 2012 *Ex Parte* Letter at 6; BT Americas June 8, 2009 Comments at 12.

Bureau shall issue a Public Notice attaching the finalized Telecommunications Reporting Worksheet and instructions.[569]

Adopting such a rule would respond to requests in the record asking that parties be given prior notice of any proposed revisions to the worksheet instructions, and an opportunity to comment on such revisions.[570] If the Bureau were to put instructions out for public comment before they are adopted, at what point in the calendar year should the Bureau place the proposed form and instructions on public notice, and when should it be required to issue the revised form and instructions? Would this proposed rule change support our proposed reform goals of fairness and simplifying compliance and administration? Parties are encouraged to provide information and data addressing how such a rule would simplify compliance and administration.

347. The Bureau currently releases instructions a year after revenues are reported – *e.g.*, the Bureau released instructions for 2011 revenues in 2012.[571] We ask whether the Bureau should instead release the form and related instructions during or prior to the relevant reporting period. In particular, we seek comment on whether releasing the form after the calendar year is over makes it more difficult for contributors to track the information that must be reported for the prior year in a manner consistent with the prescribed format. If so, commenters should provide specific examples of such burden, and quantify such examples with data.

348. Should the Commission specify that contributors are required to comply with the Form 499 instructions adopted pursuant to such a process? Should the Bureau have delegated authority to make changes to the Form and related instructions to the extent that they constitute binding requirements, and if so, what should be the scope of its authority?

349. Finally, some of the reforms proposed in this Notice could, if adopted, require extensive revision of the Telecommunications Reporting Worksheet. Even if we do not adopt an annual process for publicizing the updated form, should we require the Bureau to set out for comment the proposed revisions to the Telecommunications Reporting Worksheets and accompanying instructions before implementation of any significant changes resulting from the reforms identified in this Notice? What is the most efficient way to seek public input on how to implement these changes in a straightforward and readable manner so that all reporting entities can know their obligations and comply with our rules?

B. Revising the Frequency of Adjustments to the Contribution Factor

350. In this section, we seek comment on revising the frequency with which certain adjustments are made to the contribution factor.

351. *Background.* Each quarter, USAC projects the expected expenses of the Fund, accounting for any "prior period adjustments." More precisely, USAC calculates the difference between projected and actual revenue requirements (*i.e.*, demand for funding from the four distribution programs plus associated administrative expenses) in a given quarter and carries forward the difference to the next quarterly demand filing.[572] This adjustment for the immediately preceding quarter affects the contribution factor in the subsequent quarter; prior period adjustments that result in a reduction to the contribution base for the prior periods increase the contribution factor for the following quarter (referred to below as

[569] *See* Appendix A, 47 C.F.R. § 54.711(d).

[570] *See, e.g.*, USTelecom Mar. 28 2012 *Ex Parte* Letter at 6; Comments of AT&T Inc., WC Docket No. 06-122, at 4 (filed June 8, 2009); BT Americas June 8, 2009 Comments at 12.

[571] *2012 FCC Form 499 Public Notice.*

[572] 47 C.F.R. § 54.709(b).

increased demand adjustments). Conversely, prior period adjustments that result in an increase to the contribution base for prior periods decrease the contribution factor for the following quarter (referred to below as decreased demand adjustments).[573] As a result, the Commission currently adjusts the contribution factor each quarter if USAC collects insufficient funds, or if USAC collects funds in excess of actual expenses in the prior quarter under the current system.[574]

352. Over the last seven quarters, the contribution factor has been revised both up (for increased demand adjustments) and down (for decreased demand adjustments) to reflect prior period adjustments to the contribution base. In this period, there was an aggregate of approximately $405.13 million in increased demand adjustments to the contribution factor, and an aggregate of $206.65 million in decreased demand adjustments. This, in turn, contributed to a fluctuation in the contribution factor from a low of 13 percent in one quarter to a high of over 17 percent in another quarter.[575] We note, however, that prior period adjustments are not the only source for fluctuations in the contribution factor from one quarter to the next. Fluctuations in the contribution factor from quarter to quarter are also caused by increased and decreased program demand.

353. *Discussion.* If the Commission continues a revenues-based system or alternative system that will use a contribution factor, we seek comment on modifying the frequency of changes to the contribution factor. Presently, the contribution factor is revised on a quarterly basis. We seek comment on revising the contribution factor less frequently, such as annually. USTelecom has argued that the Commission should take decisive steps to address volatility in the contribution factor, including considering an annual contribution factor, which is used for Interstate TRS and other Commission programs, and other "process changes to enhance program stability."[576] Such a change could provide greater predictability to contributors, particularly those that enter into term contracts with their customers.

354. Historically, the Commission utilized quarterly adjustments in the contribution factor to ensure there would be sufficient funding to meet any changes in demand from each of the four distribution programs. We seek comment on whether we should revise our rules, for example, to use reserves, to the extent necessary, to meet any quarterly fluctuation in demand. Would such a method better serve our proposed reform goals of increasing efficiency, fairness, and sustainability of the Fund? If we were to adopt a rule requiring annual adjustments to the contribution factor, should we wait to implement such a rule until 2013, when the Commission expects to have the information needed to be in the position to determine an appropriate budget for the Lifeline program?[577]

355. Would adjusting the contribution factor on an annual basis advance our proposed reform goals of increasing administrative efficiency, fairness and sustainability? For example, does the fluctuation in the contribution factor create revenue reporting difficulties for stakeholders? Does it cause difficulties in marketing services to consumers? Does the fluctuation from one quarter to the next in the

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[573] Quarterly adjustments to the contribution factor are announced by public notices. *See, e.g., Proposed Second Quarter 2012 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 12-396 (rel. Mar. 13, 2012); *Proposed First Quarter 2012 Universal Service Contribution Factor*, CC Docket No. 96-45, Public Notice, DA 11-2020 (rel. Dec. 14, 2011).

[574] 47 C.F.R. § 54.709(c).

[575] The total of all prior period adjustments to universal service demand between 2009Q1 and 2012Q2 is a net decrease in demand of $48.97 million.

[576] USTelecom Mar. 28, 2012 *Ex Parte* Letter at 7. *See* 47 C.F.R. § 64.604 (providing that contributors' contribution to the TRS fund shall be the product of all subject revenues for the prior calendar and an annual contribution factor).

[577] *See Lifeline and Link Up Reform and Modernization Order*, FCC 12-11 at para. 359.

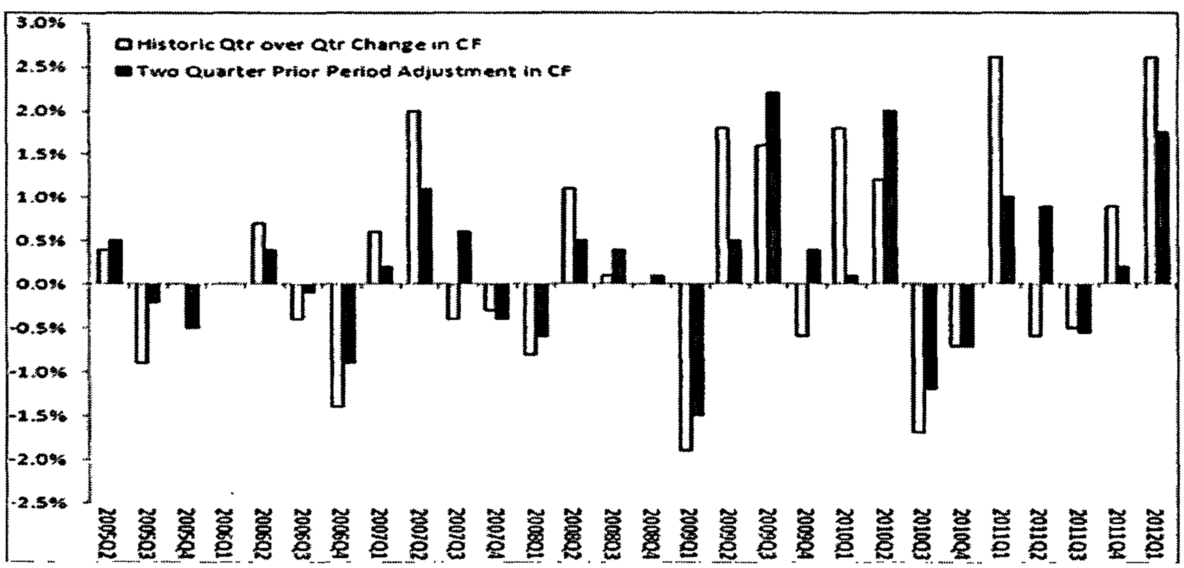
contribution factor make it difficult for contributors to anticipate their likely contribution obligations for the year, or for end-user customers to forecast the total cost of their communications packages, including any universal service pass through charges? To the extent there are reasons to adjust the factor more often than annually, would it be an improvement to the current system to make such adjustments every six months?

356. Another option to reduce fluctuations in the contribution factor caused by prior period adjustments is to extend the period of time during which such prior period adjustments are taken into account for subsequent adjustments to the contribution factor. For example, we could require that prior period adjustments be leveled out over a period of two subsequent quarters under a rule that provides as follows:

> *If the contributions received by the Administrator in a quarter exceed or are inadequate to meet the actual expenses for that quarter, the Administrator shall adjust its projected expenses for the following two quarters to account for the excess or inadequate payments (and any associated costs) unless instructed to do otherwise by the Commission. The contribution factor for the following two quarters will take into consideration the projected costs of the support mechanism for those two quarters, and the excess or insufficient contributions carried over from the previous quarter.*

357. We seek comment on whether accounting for prior-period adjustments over a longer period, such as two quarters rather than one, could reduce the amount and severity of the fluctuation in the contribution factor from one period to the next.[578] For illustrative purposes, Chart 8 below contrasts the quarter-to-quarter change in the contribution factor under our existing rule ("Historical Change in CF") to the quarter-to-quarter change in the contribution factor that would have occurred if prior period adjustments had occurred over two quarters ("Two Quarter Prior Period Adjustment in CF"):

Chart 8



358. By providing USAC with more than one quarter to account for these adjustments, the increases and decreases may help to offset each other, and thereby reduce the period to period fluctuations

[578] Chart 8 presents staff analysis of the quarterly contribution factors, as further described in Appendix D.

in the contribution factor. For example, the quarterly contribution factor increased or decreased by more than one percentage point eleven times since 2005. We estimate that there would have been only seven such fluctuations during this period if instead USAC had been able to account for prior-period adjustments over two quarters. Looking at it another way, the average quarter-to-quarter fluctuation of the contribution factor was 0.99 percent; whereas, the average fluctuation for the adjusted factor under this proposal would have been 0.67 percent. Appendix D illustrates these estimations. We seek comment on this analysis.

359. We seek comment on the merits and technical aspects of a rule change to address quarter to quarter fluctuations in the contribution factor. What would be the benefits of modifying our rules as discussed above, and would such a change have any negative or positive impact on administration of the Fund? What are the potential unintended consequences of extending the period of time during which prior period adjustments are taken into account? Would authorizing USAC to make prior period adjustments over an even longer period be appropriate, and if so, over how many quarters? If we were to move to an alternative to the current revenue-based system, should we similarly direct USAC to account for any fluctuations in demand over a period of time longer than one quarter in order to minimize quarterly variation in the contribution obligation associated with the assessable unit of measure?

C. Pay-and-Dispute Policy

360. In this section we propose to adopt either as Commission policy or a codified rule the current USAC practice commonly referred to as the "pay-and-dispute" policy. This policy requires contributors that wish to challenge a USAC invoice to keep their accounts current while disputing the amounts billed in order to avoid late fees, interest, and penalties.[579] We seek comment on whether adopting "pay-and–dispute" as a policy or rule supports our proposed reform goals, including ensuring predictability and sustainability of the Fund, simplifying compliance and administration, and fairness.

361. *Background.* It is a contributor's responsibility to report accurate data in a timely manner and correct any forms filed with USAC.[580] Under the current revenues-based system, each quarter, USAC calculates each contributor's contribution obligation based on the projected revenues reported on a contributor's quarterly Telecommunications Reporting Worksheets.[581] USAC adjusts these contribution obligations if the contributor has filed a Worksheet that requires a true-up. USAC then issues invoices each month billing the contributor for its calculated contribution obligation. Our rules require contributors to pay the amount billed by the due date to avoid late fees, interest, and penalties.[582]

362. The Commission's rules do not create an exception when a contributor has filed a revision to, or appeal of, its contribution assessment. In other words, nothing in our rules specifically exempts a contributor from paying the amount shown on the invoice if a contributor disagrees with

[579] *See* USAC, Understanding Invoices, *available at* http://www.usac.org/cont/invoices/default.aspx (last visited Apr. 16, 2012).

[580] *See* 47 C.F.R. §§ 54.711, 54.713.

[581] *See* 47 C.F.R. § 54.709(a). If a contributor fails to file the quarterly worksheet by its due date, USAC is required to bill that contributor "based on whatever relevant data the Administrator has available, including, but not limited to, the number of lines presubscribed to the contributor and data from previous years, taking into consideration any estimated changes in such data." 47 C.F.R. § 54.709(d).

[582] *See* 47 C.F.R. § 54.713(a) ("A contributor that fails to file a Telecommunications Reporting Worksheet and subsequently is billed by the Administrator shall pay the amount for which it is billed."), (b) ("If a universal service fund contributor fails to make full payment on or before the date due of the monthly amount established by the contributor's applicable Form 499-A or Form 499-Q, or the monthly invoice provided by the Administrator, the payment is delinquent.").